

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Hospice Care for Terminally ill Patients

Hospice care is an alternative approach to the traditional medical model for end-of-life care. Hospice programs specialize in providing basic medical care, palliation and pain management, and social, psychological, and spiritual support to terminally-ill¹ individuals and their families. In Fiscal Year 2004-05, Florida hospice programs provided care to more than 98,000 individuals with terminal illnesses.² Nationally, the number of individuals receiving hospice care has increased 300% in the last decade, from 340,000 hospice patients in 1994 to 1,060,000 patients in 2004.³

With one exception, s. 400.601(3), F.S., requires hospice programs to operate as not-for-profit corporations, as defined in chapter 617, F.S.⁴ Section 400.602(5), F.S., authorizes a hospice that was incorporated on or before July 1, 1978 to be transferred to a for-profit or not-for-profit entity, while s. 400.602(6), F.S., further permits any entity entitled to licensure under s. 400.602(5), F.S., to obtain a license for up to two additional hospices.⁵

Two for-profit entities, Vitas Healthcare Corporation of Florida and Vitas Healthcare Corporation of Central Florida, each purchased a not-for-profit hospice established before July 1, 1978 in accordance with s. 400.602(5), F.S. Both Vitas Healthcare Corporation of Florida and Vitas Healthcare Corporation of Central Florida have obtained licenses for two additional hospices⁶, as permitted in s. 400.602(6), F.S. There are only four remaining hospices that were incorporated on or before July 1, 1978, that could be sold to for-profit hospices pursuant to s. 400.602(5), F.S.:

- Hospice of the Florida Suncoast (Pinellas County)
- Hospice of St. Francis (Brevard County)
- Hospice of Palm Beach County (Palm Beach)
- Hospice of Gold Coast Home Health Services (Broward)

All entities desiring a license to provide hospice services in the state must first obtain a certificate of need (CON) from the Agency for Health Care Administration (AHCA). Under s. 408.043(2), F.S., the

¹ To be eligible for hospice services in Florida, patients must receive a referral from their attending or primary physician for hospice care based on a diagnosis of a terminal illness with a life expectancy of one year or less, per s. 400.601(10), F.S.

² *Florida's Certificate of Need Process Ensures Qualified Hospice Programs; Performance Reporting Is Important to Assess Hospice Quality*, Report 06-29, March 2006, Office of Program Policy Analysis and Government Accountability.

³ *NHPCO's 2004 Facts and Figures*, accessed March 23, 2006, National Hospice and Palliative Care Organization, available at: http://www.nhpc.org/files/public/Facts_Figures_for2004data.pdf.

⁴ A not-for-profit corporation is defined in s. 617.01401(5), F.S., as a corporation, no part of the income or profit of which is distributable to its members, directors, or officers.

⁵ Such entity may obtain a license for up to two additional hospices "in accordance with the other requirements of this part and upon receipt of any certificate of need that may be required under the provisions of ss. 408.031-408.045, F.S."

⁶ On March 23, 2006, the license status of the hospice run by Vitas Healthcare Corporations of Florida in Boynton Beach, Florida (Palm Beach County) indicated that the facility had received a provisional license pending necessary background screening. Hospice licenses can be reviewed at <http://facilitylocator.floridahealthstat.com/FacilityFind.aspx?pFacIType=22&pFacIName=&pFacICity=&pFacIZip=&pCounty=ALL&pFacIInspectionRegion=ALL>.

need for a new or expanded hospice must be determined on the basis of the need for, and availability of, hospice services in the community. Other guidelines provide that:

- the formula on which the CON is based must discourage regional monopolies and promote competition;
- the inpatient hospice care component of a hospice which is a freestanding facility, or a part of a facility, which is primarily engaged in providing inpatient care and related services and is not licensed as a health care facility, must also be required to obtain a CON; and
- provision of hospice care by any current provider of health care is a significant change in service, and therefore requires a CON for such services.

AHCA has established 27 service areas for hospices⁷ as follows:

- Service Area 1 consists of Escambia, Okaloosa, Santa Rosa, and Walton Counties.
- Service Area 2A consists of Bay, Calhoun, Gulf, Holmes, Jackson, and Washington Counties.
- Service Area 2B consists of Franklin, Gadsden, Jefferson, Leon, Liberty, Madison, Taylor, and Wakulla Counties.
- Service Area 3A consists of Alachua, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy, Putnam, Suwannee, and Union Counties.
- Service Area 3B consists of Marion County.
- Service Area 3C consists of Citrus County.
- Service Area 3D consists of Hernando County.
- Service Area 3E consists of Lake and Sumter Counties.
- Service Area 4A consists of Baker, Clay, Duval, Nassau, and St. Johns Counties.
- Service Area 4B consists of Flagler and Volusia Counties.
- Service Area 5A consists of Pasco County.
- Service Area 5B consists of Pinellas County.
- Service Area 6A consists of Hillsborough County.
- Service Area 6B consists of Hardee, Highlands, and Polk Counties.
- Service Area 6C consists of Manatee County.
- Service Area 7A consists of Brevard County.
- Service Area 7B consists of Orange and Osceola Counties.
- Service Area 7C consists of Seminole County.
- Service Area 8A consists of Charlotte and DeSoto Counties.
- Service Area 8B consists of Collier County.
- Service Area 8C consists of Glades, Hendry and Lee Counties.
- Service Area 8D consists of Sarasota County.
- Service Area 9A consists of Indian River County.
- Service Area 9B consists of Martin, Okeechobee, and St. Lucie Counties.
- Service Area 9C consists of Palm Beach County.
- Service Area 10 consists of Broward County.
- Service Area 11 consists of Dade and Monroe Counties.

OPPAGA Review of Florida's Hospice Care Industry

Pursuant to a legislative request, the Office of Program Policy Analysis and Government Accountability (OPPAGA) performed a review of the state's hospice industry in March, 2006, as well as a survey of the various approaches to regulating hospice facilities utilized by eight other states,⁸ in an effort to evaluate Florida's system of providing hospice care to terminally-ill patients.⁹ According to the report,

⁷ Rule 59C-1.0355, F.A.C.

⁸ The eight states surveyed (Alabama, Illinois, Maryland, Virginia, Ohio, Tennessee, Texas, and California) are similar to Florida in terms of either size and/or elderly population.

⁹ *Florida's Certificate of Need Process Ensures Qualified Hospice Programs; Performance Reporting Is Important to Assess Hospice Quality*, Office of Program Policy Analysis and Government Accountability, *supra*.

Florida's method of regulating hospice programs differs from other states in two major ways. Florida is the only state that requires new hospice programs to operate as not-for-profit corporations and is one of only 12 states that comprehensively regulates the growth of hospice programs using a Certificate of Need process.¹⁰

OPPAGA reports ownership status does not appear to affect performance of hospice programs

Noting that available information on the issue is limited, OPPAGA reported that "ownership status does not appear to affect hospice care in Florida or in other states." Hospice officials in states authorizing both not-for-profit and for-profit hospice facilities reported having no evidence suggesting that ownership status affects the quality of hospice care provided.

Additionally, OPPAGA noted that there was no significant difference in the number of complaints or allegations received by AHCA relating to either not-for-profit or for-profit hospice programs, though the total number of hospice allegations in the state was small.¹¹

OPPAGA recommended that the Legislature direct AHCA and the Department of Elder Affairs (DOEA) to work with Florida hospice programs to develop standardized quality and outcome measures, as well as a mechanism for collecting and maintaining such information. Moreover, the report urged hospice programs in the state to consider participating in national initiatives such as those developed by the National Hospice and Palliative Care Organization (NHPCO).

OPPAGA recommends continued CON approval for new hospice programs

OPPAGA further recommended that, should it elect to license new for-profit hospice programs in the state, the Legislature should maintain its current CON process. The OPPAGA report indicated that such process "ensures that new hospice programs operate only in areas of the state where current hospice programs are not able to meet projected hospice needs," thereby preventing an excess of hospice facilities within a single geographic locale. OPPAGA reported that the CON process also ensures that "hospice programs have the expertise, financial resources, and commitment to meet the needs of their communities."

OPPAGA noted that AHCA is currently exploring modifications to its methodology for identifying areas of the state where existing programs may not be meeting the need for hospice care services.

EFFECT OF PROPOSED CHANGES

HB 1417 provides that notwithstanding the provisions of s. 400.601(3), F.S. (*i.e.*, that a hospice be a not for profit corporation), any for-profit hospice providing a continuum of palliative and supportive care for a terminally-ill patient and his or her family may obtain a license (in accordance with other statutory requirements and upon receipt of any certificate of need required under the provisions of ss. 408.031-408.045, F.S.) to provide care in either:

- a hospice service area¹² with a population of 750,000¹³ or more (except that a for-profit hospice may not be located in any of the counties in such service area that have a population of 50,000 or less); or

¹⁰ Ibid.

¹¹ Between August, 2002 and July, 2005, AHCA received a total of only 279 allegations pertaining to hospice operations.

¹² The bill specifies that, for purposes of the relevant subsection, the term "hospice service area" means a geographic area as defined in rule 59C-1.0355, F.A.C.

¹³ Pursuant to s. 1.01(7), F.S., reference to the population of any county of the state shall be taken to be that as shown by the last preceding official decennial federal census

- a hospice service area in which a for-profit hospice is currently licensed to operate under s. 400.602(5) and (6), F.S.

The Hospice Service Area population totals below are derived from the Florida county counts from the United States Census 2000, and illustrate hospice service areas in the state with populations exceeding 750,000:¹⁴

Service Area	Counties	Total Population
4A	Baker ¹⁵	22,259
	Clay	140,814
	Duval	778,879
	Nassau	57,663
	St. John's	123,135
	Service Area 4A Total	1,122,750
5B	Pinellas	921,482
6A	Hillsborough	998,948
7B	Orange	896,344
	Osceola	172,493
	Service Area 7B Total	1,068,837
9C	Palm Beach	1,131,184
10	Broward	1,623,018
11	Miami-Dade	2,253,362
	Monroe	79,589
	Service Area 11 Total	2,332,951

In the future, for-profit hospices could be licensed in other service areas once such areas achieve a population of at least 750,000.

Florida has 44 licensed hospices, most of which are operated as not-for-profit corporations. Six are organized as for-profit hospices, and include:

- Vitas Healthcare Corporation of Florida maintains three licensed for-profit hospice programs: one in Miami-Dade County (Service Area 11), one in Broward County (Service Area 10), and one in Palm Beach County (Service Area 9C), and
- Vitas Healthcare Corporation of Central Florida operates three separate for-profit hospices: one serving Orange, Osceola (Service Area 7B) and Seminole Counties (Service Area 7C), one in Brevard County (Service Area 7A), and a third serving Flagler and Volusia Counties (Service Area 4B).

Consequently, for profit hospices could also be licensed in the following hospice service areas:

- 4B, 7A, 7B, 7C, 9C, 10, and 11 (for-profit hospices are currently licensed in these seven hospice service areas under s. 400.602(5) and (6), F.S.; therefore, the bill permits additional for-profit hospices to obtain licensure in these service areas); and

¹⁴ Office of Economic and Demographic Research; available at: <http://www.myflorida.com/edr/population/census2000.htm>.

¹⁵ Despite being a part of a hospice service area with a population of 750,000 or more, Baker County has a population below 50,000 and therefore for-profit hospice facilities are prevented from opening in Baker County under this provision of the legislation.

- should a for-profit entity acquire the license of Hospice of the Suncoast in Pinellas County, in 5B¹⁶

In sum, the bill authorizes for-profit hospice programs, organized to provide a continuum of palliative and supportive care for a terminally-ill patient and his or her family, to obtain licensure in eight¹⁷ of the state's 27 hospice service areas.

The bill also requires AHCA to submit to the President of the Senate and the Speaker of the House of Representatives, no later than January 1, 2008, a report analyzing the impact of for-profit hospices on the delivery of care to terminally-ill patients, and include in the report a review of the quality of care offered by for-profit hospices, changes in the competitive marketplace in hospice service areas, and any other information deemed pertinent by the agency.

The bill provides an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 400.602, F.S., providing for licensure of certain for-profit hospice entities to provide care for terminally-ill patients.

Section 2. Directs AHCA to submit a report to the President of the Senate and the Speaker of the House of Representatives.

Section 3. Provides the act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

For profit corporations will be able to compete for a certificate of need to become a hospice in areas of the state where for-profit hospices already exist.

¹⁶ Pursuant to s. 400.602(6), F.S., that for profit hospice could license two additional hospices in any one of the enumerated hospice service areas upon receipt of certificates of need.

¹⁷ These eight service areas are 4A, 4B, 5B, 6A, 7B, 9C, 10 and 11.

While the actual number of licensed hospices will continue to be regulated by the certificate-of-need process, the changes in this bill likely will increase competition among prospective providers in the hospice service areas where for-profit hospices are licensed.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Counties and municipalities are unaffected by this legislation.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES